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marketing year, the Board may recommend to the Secretary revisions in the marketing policy for that year: *Provided*, That in no event shall any such recommendation provide for free and restricted percentages based on an inshell trade demand which is more than 125 percent of the average of the preceding three years' trade acquisitions computed pursuant to paragraph (b) of this section for that marketing year. At any time during the period December 1 through February 10 at the request of two or more handlers, who during the preceding marketing year handled at least 10 percent of all hazelnuts handled, the Board shall meet to determine whether the marketing policy should be revised.

[51 FR 29548, Aug. 19, 1986, as amended at 61 FR 17560, Apr. 22, 1996]

§ 982.41 Free and restricted percentages.

The free and restricted percentages computed by the Board or established by the Secretary pursuant to § 982.40 shall apply to all merchantable hazelnuts handled during the current marketing year. Until the preliminary computed free and restricted percentages are computed by the Board for the current marketing year, the percentages in effect at the end of the previous marketing year shall be applicable.

[51 FR 29548, Aug. 19, 1986]

GRADE AND SIZE REGULATION

§ 982.45 Establishment of grade and size regulations.

(a) *Minimum standards.* No handler shall handle any inshell or shelled hazelnuts unless such inshell hazelnuts meet requirements of Oregon No. 1 grade and medium size (as defined in the Oregon Grade Standards Hazelnuts In Shell), and such shelled hazelnuts meet such requirements as are established by the Secretary on the basis of a recommendation of the Board, except as may be otherwise provided in § 982.57. These minimum standards may be modified by the Secretary on the basis of a recommendation of the Board or other information whenever he finds that such modification would tend to effectuate the declared policy of the act. Such minimum standards and the

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provisions of this part relating to the administration thereof shall continue in effect irrespective of whether the season average price of hazelnuts is above the parity level specified in section 2(l) of the act.

(b) *Additional grade and size regulations.* When the season average price of hazelnuts is not determined to be above parity, the Secretary may establish additional grade and size regulations for inshell hazelnuts in the form of a more restrictive minimum standard than that specified in paragraph (a) of this section, or pack specifications as to grades and sizes that may be handled, if he finds, on the basis of a recommendation of the Board or other information, that such regulations would tend to effectuate the declared policy of the act.

[24 FR 6185, Aug. 1, 1959. Redesignated at 26 FR 12751, Dec. 30, 1961, and amended at 37 FR 589, Jan. 14, 1972]

§ 982.46 Inspection and certification.

(a) Before or upon handling any hazelnuts, or before any inshell or shelled hazelnuts are credited (under §§ 982.50 or 982.51) in satisfaction of a restricted obligation, each handler shall, at his own expense, cause such hazelnuts to be inspected and certified by the Federal-State Inspection Service as meeting the then effective grade and size regulations or, if inshell or shelled hazelnuts are withheld under § 982.51, the applicable requirements specified in that section. The handler obtaining such inspection of hazelnuts shall cause a copy of the certificate issued by such inspection service applicable to such hazelnuts to be furnished to the Board.

(b) All hazelnuts so inspected and certified shall be identified as prescribed by the Board. Such identification shall be affixed to the hazelnut containers by the handler under direction and supervision of the Board or the Federal-State Inspection Service, and shall not be removed or altered by any person except as directed by the Board.

(c) Whenever the Board determines that the length of time in storage and conditions of storage of any lot of certified merchantable hazelnuts have been or are such as to normally cause

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deterioration, it may require that such lot of hazelnuts be reinspected at the handler's expense prior to handling.

[40 FR 53227, Nov. 17, 1975, as amended at 61 FR 17560, Apr. 22, 1996]

CONTROL OF DISTRIBUTION

§ 982.50 Restricted obligation.

(a) No handler shall handle inshell hazelnuts unless prior to or upon shipment thereof, he: (1) Has withheld from handling a quantity, by weight, of certified merchantable hazelnuts determined by dividing the quantity handled, or to be handled, by the applicable free percentage and multiplying the quotient by the restricted percentage; (2) has withheld from handling an equivalent quantity of creditable ungraded inshell hazelnuts under § 982.51(a); or (3) has under § 982.51(b), declared in lieu of a quantity of certified merchantable hazelnuts, under paragraph (a)(1) of this section, the equivalent quantity, by weight as determined under that section, of shelled hazelnuts certified as meeting the standards in effect for Oregon No. 1 grade for shelled hazelnuts as contained in Oregon Grade Standards for Hazelnut Kernels or such other standards as may be recommended by the Board and established by the Secretary. Any handler who intends to withhold shelled hazelnuts in satisfaction of a restricted obligation must make such declaration to the Board prior to shelling any such hazelnuts. Withholding may be temporarily deferred under the bonding provisions in § 982.54. The quantity of hazelnuts required to be withheld shall be the restricted obligation. Certified merchantable hazelnuts handled in accordance with this subpart shall be deemed to be the handler's quota fixed by the Secretary within the meaning of section 8a(5) of the Act.

(b) Inshell hazelnuts withheld by a handler in satisfaction of his restricted obligation shall not be handled and shall be held by him subject to examination by and accounting control of, the Board until disposed of pursuant to this part.

(c) A handler having certified merchantable hazelnuts which have not been handled at the end of a marketing

year may elect to have those hazelnuts bear the restricted and assessment obligations of that year or of the marketing year in which handled. The Board shall establish such procedures as are necessary to facilitate the administration of this option among handlers.

(d) Whenever the restricted percentage for a marketing year is reduced, each handler's restricted obligation shall be reduced to conform with the new restricted percentage. Any handler who, upon such reduction, is withholding restricted hazelnuts in excess of his new restricted obligation may have the excess freed from withholding by complying with such procedures as the Board may require to insure identification of the remaining hazelnuts withheld.

[40 FR 53227, Nov. 17, 1975, as amended at 46 FR 26039, May 11, 1981]

§ 982.51 Restricted credit for ungraded inshell hazelnuts and for shelled hazelnuts.

(a) A handler may withhold ungraded inshell hazelnuts in lieu of certified merchantable hazelnuts in satisfaction of that handler's restricted obligations, and the weight on which credit may be received shall be the shelled hazelnut equivalent weight as inspected by the Federal-State Inspection Service multiplied by 2.5. Any lot of ungraded hazelnuts not meeting the moisture requirements for certified merchantable hazelnuts shall not be eligible for credit. All determinations as to the shelled hazelnut equivalent weight shall be made by the Federal-State Inspection Service at the handler's expense. Hazelnuts so withheld shall be subject to the applicable requirements of § 982.50. The weight of all such lots for which a handler has received credit shall be adjusted by the Board when the lots are handled or disposed of so that the creditable weight is equal to the amount of certified merchantable inshell hazelnuts or certified shelled hazelnuts that are subsequently handled or disposed of from those lots. If this adjustment causes the handler to no longer be in satisfaction of that handler's restricted obligation as required by § 982.50, the